

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6127 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JAGATGURU G SINDHI

Versus

DIVISIONAL CONTROLLER

Appearance:

Mr.D.M.Thakkar for MR PM THAKKAR for Petitioner
No one appears on behalf of the respondent.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 16/01/99

ORAL JUDGEMENT

Heard learned counsel.

This Special Civil Application is directed against the award dt.30.12.91 passed by the Labour Court-2, Vadodara in Reference (LCV) No.575/86 whereby the Reference has been rejected.

The petitioner herein has stated in para 2 of the petition that he was working as a driver under the respondent for 17 years. No definite date of initial appointment has been given. According to the mention made in para 22 of the impugned Award, the petitioner's service period as a driver was 12 years. In this very

para it has also been mentioned that the petitioner had committed accidents on 21.10.74 and 10.2.76 also. So far as the case in which the petitioner has been punished lastly relates to the accident committed by him on 10.9.80 while he was on duty as a driver on Surat Bagasara route. The petitioner was charge-sheeted and a regular departmental inquiry was held against the petitioner. In this inquiry the findings were recorded against the petitioner and by an order dt.7.3.82 the petitioner was dismissed. The petitioner filed a Departmental Appeal but the same was also rejected. The petitioner then raised an industrial dispute being Reference No.575/86, which was decided against the petitioner and the Reference has been rejected by the Labour Court-2 Vadodara by Award dt.30.12.91.

The learned counsel for the petitioner has confined the challenge to the rejection of the Reference on the ground of the quantum of punishment only. I have heard learned counsel for the petitioner and have also perused the Award by which the Reference has been rejected. It appears from the Award that even prior to 1980, the petitioner had committed accidents more than once and as per the default card of the petitioner, there are 11 lapses recorded against him. While there is no scope for appreciation of the evidence and the findings recorded against the petitioner by the Labour Court also, it cannot be said in the facts and circumstances of this case that the punishment of dismissal imposed against the petitioner is either excessive or disproportionate to the element of proved misconduct against the petitioner. The Award is based on legal evidence including the opinion of the expert and in view of the oral and documentary evidence, on which the award is based, this Court does not find it to be a fit case for any interference with the Award in any manner including the question of quantum of punishment.

The learned counsel for the petitioner has however submitted that the petitioner himself had sustained serious injuries in this accident and that he had served the Corporation for a long period and, therefore, the learned counsel has submitted that it may be left open for the petitioner to approach the respondent for appointment afresh on compassionate ground for any alternative job other than the driver. Should the petitioner make any such representation before the respondent, it will be open for the respondent to consider the same sympathetically on humanitarian grounds and pass any order, which the respondent deems proper and correct in the circumstances of this case. It is,

however, made clear that it will be purely at the discretion of the Corporation to pass the orders on such representation, if any, and there is no direction by this court and any order, which may be passed by the Corporation on the petitioner's representation, if at all it goes against him, will not give rise to any further or fresh cause of action to the petitioner so as to enter into another inning of litigation. This Special Civil Application has no force and the same is hereby dismissed. Rule is hereby discharged. No order as to costs.